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March 30, 2000

VIA HAND DELIVERY

The Honorable Janet Reno
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W., Room 4545
Washington, D.C. 20530-0001

Re: **Petition for Extraordinary Relief: Homestead Air Force Base**

Dear Madame Attorney General:

On August 10, 1999, we submitted to you a Petition for Extraordinary Relief ("Petition") on behalf of the Florida municipalities of Florida City and Homestead, the Coalition of Florida Farmworker Organizations, Inc., the Dade County Farm Bureau, New Visions for South Dade, Inc., the Greater New Covenant Missionary Baptist Church, RCH-Haitian Community Radio and the minority-owned Homestead Air Base Developers, Inc. (now formalized as the Equal Justice Coalition).

The Petition is based, as a geographic matter, on the use and conveyance of the Homestead Air Force Base ("the Base") in Homestead, Florida to Miami-Dade County -- the Local Redevelopment Agency ("LRA") formally designated by the Department of Defense in 1993 pursuant to the Base Closure and Realignment Act of 1990, Pub. L. No. 101-510 ("BRAC"). As a legal and policy matter, the means and methods used by those in and out of

government to prevent deliberately the proper, timely conveyance of the Base have and continue to deny Petitioners the equal protection of the law and violate their civil rights.

We have said it before. The President and Secretary of Defense publicly and repeatedly committed to this transfer.[1] The full legal process -- now seven years in duration -- should have ended years ago.[2] Its delay has been reprehensible. By its inaction, the Administration has rendered invisible the poor and minority residents of Homestead and Florida City. Despite his promises then, the President has now fallen eerily silent; the vacuum has been filled by others with a different agenda.

In her December 27, 1999 response to our August 10, 1999 Petition, Assistant Attorney General Lois Schiffer, Environmental and Natural Resources Division, not only failed to respond to the Petitioners' substantive civil rights claims and the request for an investigation to penetrate the wrongdoing shielded by the Secretary of Interior, the Chairperson of the Council on Environmental Quality ("CEQ") and others; far more damning, she revealed the inherent distortion of the Division's fundamental mission when particular, historically cognizable civil rights violations are alleged rather than the conventional violation of environmental statutes. The Division also is defensively guarding its clients, and its own active authoritative advisory role in this controversy for years. The Environment and Natural Resource Division is the wrong place for fair and meaningful review and action on the claims of wrongdoing in our Petition.

Consequently, we have filed today a formal Complaint with Bill Lann Lee, the Acting Assistant Attorney General of the Civil Rights Division, seeking an investigation into the conduct of public officials and private individuals that violate your Petitioners' civil rights. (A copy has been attached.)

Moreover, as described in more detail below and in our Petition, what has continued to emerge in the conduct of these public and private parties -- especially in the pervasive zeal of the CEQ's Chairperson George Frampton and various individuals within the Department of Interior ("Interior") -- reflects the most insidious form of such civil rights violations: the "secret one-sided determination of facts decisive of rights." Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170 (1951) (Frankfurter, J., concurring). These public officials and others have excluded the Petitioners from critical government decision-making directly affecting the Base conveyance. In the comfortable, distant ambiance from which they speak -- in Miami, Naples, Ocean Reef or Washington, D.C. -- neither principles of law nor elementary concerns for justice seem to temper their conduct. Such a biased formulation of Federal policy cannot, no

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[1] Petition at 5-7.

[2] Petition at 8-12.

matter how effectively or loudly articulated, "make permissible a course of conduct forbidden by law." United States v. City and County of San Francisco, 310 U.S.16, 28 (1940).

I.

OUR CIVIL AND CONSTITUTIONAL RIGHTS CLAIM HAS BEEN IGNORED

Civil Rights Are At Stake. As a factual matter our ethical and legal objections set forth in the Petition are directed against the conduct of the CEQ, Interior, various individuals (George T. Frampton and Sally Ericsson, CEQ's Associate Director), certain government-actors, not-for-profit environmental organizations (i.e., the Sierra Club, et al.), and those receiving federal assistance (i.e., Collier Resources Company). The essential heart of our Petition is founded on the violation of Petitioner's civil rights; those rights and obligations that find their origins largely in the Fifth and Fourteenth Amendments, in the Reconstruction period civil rights statutes (codified at 42 U.S.C. §§ 1983, 1985, 2000(d) (2000)) and, after a harsh struggle between the powerless poor and powerful environmental groups tempered by forms of animus and neglect by the non-profit environmental community that still persists, the issuance of Executive Order No. 12898, 59 Fed. Reg. 7629 (1994) (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations).

That these rights and obligations have emerged in this matter through the application and, in our view, abuse of more contemporary environmental and land use statutes such as the National Environmental Policy Act ("NEPA"), 42 USC § 4321, et seq.(2000), or BRAC does not transform the civil rights violations we allege into a narrow "environmental" controversy any more than if our Petition implicated the conduct of a HUD official sanctioning unfair private conduct in a housing project where an Environmental Impact Statement was prepared. Cf. Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982).

The Narrow and Fundamentally Prejudicial Restriction Placed On Our Petition. Ms. Schiffer's response, shorn of its condescending rhetoric ("we share the concern you express . . ."), offers one practical form of action reiterated three times: the Air Force will write and conduct some of its activities in Spanish. This is hardly commendable; a substantial portion of the affected community is Spanish speaking. The language used to violate the law -- at least to a person in poverty and suffering the consequence -- does not make the violation any less severe, irreparable or wrong.

Moreover, Ms. Schiffer's response fails to respond to any of the substantive claims of wrongdoing we alleged. Our Petition makes direct, detailed complaints about the conduct of various not-for-profit organizations acting alone and in relation to federal officials and other unnamed individuals. That such organizations are "environmental" groups provides only a patina of rectitude. In practice, many of these groups use the wealth and status of their members to protect the status quo in which they are invested. The poor and minorities have often been on

the receiving end of their political heft, which is typically asserted through the rhetoric of conservation.[3]

The CEQ and its Chairperson, George Frampton, are also steeped in, and guided by, this rhetoric. For over ten years, Frampton has advocated against the presence of airplane activity over the Florida Everglades. As president of the Wilderness Society from 1986 to 1993, he, along with other environmentalists, "urged the Air Force to shelve plans for conducting F-4 and F-16 dogfights over the Everglades for fear of disturbing both the wildlife and park visitors."[4] Moreover, in 1991, he encouraged the federal government to buy more than one million acres of land near federal parks, including 16,000 acres to be added to the Big Cypress National Preserve and 1,300 to be added to the Everglades National Park.[5] As Assistant Secretary for Fish and Wildlife and Parks at the Department of the Interior, in July 1996, two years after the Air Force's ROD and close to the final approval and transfer of the Base, he sought to delay the transfer of Homestead AFB to Miami-Dade County.

Writing to both the private, non-profit World Wildlife Fund and the FAA on the same day, he noted "the growing concern of the Federal agencies involved in the Administration's historic plan to protect and restore the Everglades and the ecosystem of South Florida [with] the development of a commercial airport at Homestead Air Force Base in Dade County." (Letter from George T. Frampton to David Hinson, FAA Administrator, of July 22, 1996) (referenced in letter from Bradford H. Sewell, Paul, Weiss, Rifkin, Wharton and Garrison to William Perry, Secretary of Defense, of October 28, 1996). He insisted further that "to ensure that redevelopment of Homestead does not conflict with the ongoing efforts to restore and improve the environment of South Florida . . . any redevelopment plan recognize the special considerations that must be given to National Parks and other sensitive areas surrounding the base." The CEQ continues to have a formal role in the identification of alternatives and the Air Force's compliance with NEPA. See 42 U.S.C. § 4344(3) (2000); 40 C.F.R. § 1504 et seq. (2000), § 1502.2.

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[3] See William Tucker, *Environmentalism and the Leisure Class, Protecting Birds, Fishes, and Above All, Social Privilege*, Harpers Magazine, December 1977 at 49; Richard Lazarus, *Pursuing 'Environmental Justice': The Distributional Effects of Environmental Protection*, 87 Nw. U.L. Rev. 787, 788 (1993); R. Gregory Roberts, *Environmental Justice and Community Empowerment*, 48 Am. U.L. Rev. 229, 232-234 (1998).

[4] Jacquelyn Swearingen, State News Service, May 25, 1988.

[5] See *Activists Want U.S. to Purchase 1 Million Acres*, Orlando Sentinel Tribune, Feb. 10, 1991, at A22.

Mr. Frampton's conduct, before and since arriving in the government, has demonstrated an unmitigated bias and prejudgment against the interests of the poor and minority peoples of the Homestead area. See Cinderella Career & Finishing Schools v. FTC, 425 F.2d 583, 591 (D.C. Cir. 1970). In our view, he has given impermissible "preferential treatment" to the non-profit environmental organizations whose view he did, and continues to, share. See Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR § 2635 (1999); See Kennecott Copper Corp. v. FTC, 467 F.2d 67, 80 (10th Cir. 1972); American Cyanamid Co. v. FTC, 363 F.2d 757, 767 (6th Cir. 1966). We believe that the improper conduct of Mr. Frampton and the non-profit groups has and daily continues to violate your Petitioners' civil rights. Ms. Schiffer makes not a single reference to those complaints. After five months of review, it can only be a deliberate omission; reflective, once again, of why Ms. Schiffer and the Environment Division is the wrong venue for a review, on the merits, of our claims.

Finally, Ms. Schiffer's statement that the Petition "does not cite any statutory or regulatory authority on which you base your request" concerning the conduct of the CEQ and its Chairperson, George Frampton, defies the kindest expressions of incredulity and demonstrates the Division's limitations with singular clarity. We identified credible, legitimate facts to support our position. Ours was a Petition For Relief to the ultimate law enforcement authority in the nation. We wanted an investigation; a reasoned, probing inquiry on behalf of a poor and minority people. We wanted, in the process, for the Justice Department to do what its elementary purpose requires: examine the law, in all its forms, with some modicum of concern and initiative. Ms. Schiffer treated the Petition like she was defending her actions in a judicial setting; using the power of the Justice Department to stonewall rather than seriously probing the facts and articulating a recognizable form of legal reasoning. Her conduct is defensive; her response shamingly paltry in its effort and substantively wrong.

Our Claims Are Precluded at EPA and Interior. The Department of Interior and the Environmental Protection Agency ("EPA") have administrative schemes in place to receive complaints concerning violations of Title VI and the President's Executive Order 12898. See, EOD 98-13, Office for Equal Opportunities, DOI; *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits*, Office of Civil Rights, EPA, February 5, 1998. Its rules allow for allegations concerning the misconduct of state officials or others receiving EPA assistance, not private organizations, not for profit institutions or other federal agencies, including themselves. It is not a forum available to your Petitioners.

More important, even if such a forum existed at EPA and we could advise the Petitioners they would be treated fairly and objectively, Administrator Browner has made that impossible. She staked out her position: *I grew up in Miami. I don't want to see a commercial airport out there*, Miami Herald, Jan. 7, 2000.

The Administrator made these comments not in the unemployment office in Homestead or in the abandoned fields of a once thriving farm that gave life to a family in Florida City but at a meeting in Naples, Florida, of the Everglades Coalition, in the comfort of the Naples Beach

Hotel and Golf Course. One searches in vain for a recognition that "out there" are thousands of real people who need economic opportunities to provide for themselves and their families. It is their home.

Secretary Babbitt, for reasons only he can explain and despite taking an honorable part in the early years of the civil rights movement in this same part of America, has acquiesced in, if not embraced, an action that departs painfully from those principles that once touched him. Suffice it to say at this juncture, in a speech to the same enclave of detached enthusiasts at the Naples Beach Hotel and Golf Club, Secretary Babbitt made not a single reference to the people of Florida City or Homestead, to the Haitians, migrant workers, unemployed women, or single parents who cannot share the daily comforts available to his audience. "As you all know," the Secretary said, "the Base lies squarely between Biscayne National Park and the Everglades. The Interior department feels development of a commercial airport could seriously degrade both of these national parks . . ."[6]

The voices of [redacted], a Naranja Small Business owner ("We're just struggling") or Mayor Otis Wallace of Florida City ("[T]here is no Sierra Club to protect a working man who... wants nothing more than to feed, house and educate his kids")[7], do not resonate with the Administrator or the Interior Department. One local Homestead area resident, [redacted], a retired U.S. Marine Reserve officer -- who chose to stay, struck into the heart of the Secretary's inhospitable perspective if not his legal position:

> It tears my heart out to hear about folks in Naranja and the problems they're having....They are the people that can't afford to go to our national parks.[8]

When the hard choices involving race and poverty confront this Nation's environmental agencies - the CEQ, Interior and EPA -- Executive Order 12898 concerning environmental justice in minority and low-income populations is the first legal duty that is torn asunder. The historical animus that so tempered the environmental movements neglect of those in poverty or of color has been laid bare.

The Environmental Division's Inherent Limits. The Environmental and Natural Resources Division has represented, since its creation, the Department of Interior, the

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[6] *Babbitt Opposes Airport Plan at Homestead Base*, Miami Herald, January 8, 2000.

[7] Supplemental Environmental Impact Statement ("SEIS") Public Hearing Transcript, Homestead, Florida, February 1, 2000, at 35,79

[8] Id. at 100

Environmental Protection Agency and the Council on Environmental Quality. There is a long cultural interaction and meshing of values that cannot be ignored in assessing the Division's objectivity. There are numerous examples in historical terms of the ultimate collaboration; that is, when, despite the Attorney General's pre-eminence as a Cabinet Officer, the Department, through this Division and to its discredit, is indivisible from its client. In 1983, in the midst of the abuses of the Reagan administration's control over EPA and Interior, Representative Elliott Levitas (D-Ga.) concluded that it is "again obvious to me that no Justice Department is able to objectively and thoroughly investigate allegations of wrong doing against high officials of the same administration," following the Justice Department's decision not to prosecute former EPA Chief Anne Burford and five aides.[9] Our experience here affirms it.

All three of the agencies we criticize or allege are engaged in wrongdoing are the Environment Division's "clients"; each with its own active well-defined, articulated opposition to the Base transfer to the designated LRA, Miami-Dade County, for the use it intends (a reliever airport and related mixed use project). Moreover, with respect to at least one central issue described below -- i.e., the inclusion of the so-called Collier Plan in the Air Force's NEPA review for the first time -- the Division's conduct as "advisor" is highly suspect. Embraced by Interior, the Collier Plan is the Department's way of bootstrapping an alternative into the process, that was never formally introduced before, the "decision" to include it kept secret, and its content a means for racial and class segregation. The Environment Division assured the Air Force such inclusion was appropriate.

In the end, we have gone elsewhere -- directly to the Civil Rights Division. Perhaps, in time, Ms. Schiffer will find herself and the Division in the only place they are comfortable: a court of law defending her clients rather than as impartial arbiter probing for the truth, even if it means exposing and remedying the wrongdoing of those with whom she finds solace. This is hardly justice.

II.

THE DOD AND INTERIOR CONTINUING VIOLATIONS OF PETITIONER'S CIVIL RIGHTS

The Setting. The seven year history of environmental study of this Base's conveyance -- and the repression of lives and dignity and freedom it has caused -- would embarrass most governments.[10] As the African American, Hispanic and Caucasian Mayors of Miami-Dade County (Alex Penelas); Hialeah (Raul Martinez); Florida City (Otis Wallace); Homestead (Steve

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[9] Gregory Gordon, United Press International, August 11, 1983; Melinda Beck et al., *EPA: Change After Burford?*, Newsweek, March 21, 1983, at 23.

[10] See Petition at 7-13.

Shiver); Key Biscayne (Jose Ignacio Rasco); and Sweetwater (Jose Diaz); -- the heart of South Florida -- took to the microphones at the Air Force's public hearing to express their support once again for the conveyance and an airport, its hard to imagine they had faith or any modicum of confidence in elementary notions of due process, or equal protection or fairness or the due course of justice. Amidst the catcalls and whistling and jeering, for these local elected officials -- followed, as they were, by farmers, small business owners from Naranja and weary mothers from Homestead seeking the same outcome -- it must have been frighteningly and sadly reminiscent of an earlier time, when their fate was decided elsewhere, in a distance house, by those with the power -- always cloaked in "law" -- who could assure the outcome that best suited their purpose.

That purpose is now best suited by the so-called Collier Plan. It is a euphemism for deliberately segregating and dispersing the poor and minority people of this area, denying them the hope of a livelihood and employment, and disenfranchising the reasoned, community and County approved plan and its support by elected officials.

When placed in context, as described below, the Collier Plan, in its very nature and in the "secret-one sided determination of facts decisive of rights" by which it emerged suddenly as an "alternative" to the conveyance, violates the civil and constitutional rights of your Petitioners beyond those violations set forth in our Petition. See Joint Anti-Fascist Committee, 341 U.S. at 170.

The Scoping Process: No Collier or Hoover Plans. Under only the most convenient and expedient interpretations, the Air Force, once it decided -- with the "encouragement" of the CEQ, Interior and the Justice Department's Environment Division -- to prepare a Supplemental Environmental Impact Statement ("SEIS"), was obligated to publish this decision in the Federal Register and the general issues to be addressed.[11] However, the Air Force was not to conduct a new scoping process. The scope already had been determined for this Federal action in the Environmental Impact Statement ("EIS") and the Air Force is under an obligation not to enlarge or materially alter it.[12]

On February 27, 1998, the Air Force published its Notice of Intent to Prepare a SEIS for the Disposal of Portions of the Former Homestead Air Force Base (AFB), Florida.[13] Contrary to the CEQ regulations, the Air Force stated its intent to "look at all reasonable disposal

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[11] See, CEQ regulations, 40 C.F.R. § 1501.7 (2000); Air Force Instruction 32-7061, *The Environmental Impact Analysis Process*; FAA Orders 1050.1D, *Policies and Procedures for Considering Environmental Impacts*, and 5050.4A, *Airport Environmental Handbook*.

[12] 40 C.F.R. § 1502.9(c)(4)(2000).

[13] 63 Fed. Reg. 10,006 (1998)

alternatives" as though this were a new EIS.[14] Moreover, in the EIS and the original Record of Decision, there was no mention of a reasonable alternative designated as a "mixed use alternative" or "Collier Plan" or the "Hoover Plan" or anything that looked like them. So much for the law, or even the politeness of notice.

Interior and the Air Force: the Collier Plan Emerges. Without public notice or articulated justification, the Collier Plan, in all its fullness, as well as the Hoover Plan, "appeared" in the SEIS when it was published in December 1999. Despite its chimerical nature -- it is conditioned on numerous, discretionary, judicially reviewable government actions that must precede any determination that it is legitimate and "available" for any purpose[15] -- the Collier Plan now has the "stature" of a formal alternative. No formal process, open to public scrutiny, preceded the Air Force's inclusion of it in the Draft SEIS. Interior, its advocate, and the Air Force could only have engaged in a "secret one-sided determination" to assure such an outcome. See Joint Anti-Fascist Committee, 341 U.S. at 170.

With the inexplicable and unsuspected inclusion of the Collier and Hoover Plans in the Draft SEIS, at stake is not just a violation of NEPA or BRAC or the CEQ regulations but (i) of a shift to Petitioners in the burden of proof to show it is not a reasonable alternative, (ii) the existence of facts known only to the government and its sympathizers concerning how and why this Plan emerged with such formal stature; and (iii) the unfairness of surprise visited upon a minority and low-income population. These are due process and civil rights violations.

The Collier Plan: Encouraging Racial Segregation. The Collier family harkens back to Florida's yesteryear when the rules were different and forms of land ownership, political and cultural domination tempered where and how wealth and power were distributed and the rights and livelihood of the poor and minorities were denied. The Colliers remain one of South Florida's largest land owners, a county is named on its reputation and, although it has conveyed -- with all the attendant benefits to itself -- the surface rights to much of the Big Cypress National Preserve, it retains, cannily, much of the Preserve's subsurface mineral exploration rights. It has and continues to be a direct beneficiary of federal assistance.[16] For years, it also was the bane of Interior and the non-profit environmental community until it devised a plan that appealed directly to the values of both. It was an easy reach.

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[14] Id.

[15] See Federal Land Policy Management Act, 43 U.S.C. § 1701 et seq. (2000), 43 C.F.R. § 2200 et seq. (2000); Act of July 15, 1968, 16 U.S.C. 460L-22 (2000); Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 483 et seq.(2000); and Surplus Property Act of 1944, 50 U.S.C. § 1622 et seq.(2000).

[16] See 42 U.S.C. § 2000d (2000); 28 C.F.R. § 42.102(c)(4) (2000).

On May 17, 1999 -- fifteen months after the Notice to undertake the SEIS was published and the document's preparation supposedly well along -- the Collier Resources Company submitted its plan to the Air Force "as a possible reasonable commercial development alternative . . ." that contemplates a "transfer of the Homestead properties targeted for disposal in exchange for certain subsurface interests held by the Colliers in the Big Cypress National Preserve." "Homestead Air Force Base - A Reasonable Redevelopment Alternative", Collier Resources Company, May 17, 1999. ("Collier Plan"). The Collier Plan, embraced and advocated by the not-for-profits, Interior and CEQ Chairperson Frampton, is -- shorn of its glitz -- nothing more than a form of federal "redlining" in the 21st Century; the means of assuring the African American, Haitian, Hispanic and poor people of the Homestead area are geographically and economically displaced, segregated further and denied the opportunity for meaningful employment and elementary sustenance.[17] Amidst some of the highest unemployment and most debilitating poverty in the nation, the Colliers and their public and private advocates intend to build the only alternative that suits their values: the Ocean Reef of Miami-Dade County.

The Plan encompasses 717 acres. It includes:

Executive Golf Course, Executive Club House (with tennis courts and Pro shop)	145 acres[18]
Championship Golf Course, Championship Club House (with tennis courts and practice facility)	193 acres[19]
Total	338 acres

The Plan also includes the following facilities in the remaining 379 acres.

Hotel-limited Service (for business and limited stay travelers)	16 acres[20]
Hotel-Weekly stay villas (vacation traveler, all on-site amenities, tennis courts, swimming pools)	11 acres[21]

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17 See *generally* Charles L. Nier, III, *Perpetuation of Segregation: Toward a New Historical and Legal Interpretation of Redlining Under the Fair Housing Act*, 32 J. Marshall L. Rev. 617 (1999).

18 Collier Plan at 8, 12.

19 Id. at 8, 10.

20 Id. at 8, 13.

21 Id. at 8, 14.

Luxury RV [Recreational Vehicle], in excess of $100,000 1,000 pads, includes second car parking	18 acres[22]
Commercial, Movie Theater and Aquarium (wholly self-contained police, fire, post office, library movie, theater and a retail center (grocery, dry cleaner boutique, fine dinning)	49 acres[23]
Water Park (a commercial venture; water slides, wave pools, diverse certification, day-sailors, etc.)	37 acres[24]
Hotel-Golf Oriented (business traveler, vacationing family; tennis, swimming, fitness)	11 acres[25]
Miscellaneous (roads, buffers, etc.)	49 acres
Total	226 acres

Consequently, 564 acres or approximately 80% of the site will be, as a practical matter, a detached enclave for wealth; the equivalent of an inward focused, gated community serving not the people of this region but of another, if they make use of it at all. It also will deliberately include and destroy the only truly community facilities already transferred to the School Board and those planned for transfer to the County.[26] The Collier Plan insists on syphoning-off all the land available to the community.

The Collier Plan is in the image of its most vocal advocates, those who live and prosper at a distance. The jobs available in such a setting are well-known -- maids, grounds keepers, caddies, pool attendants and sales clerks. There is only one message to the African Americans, Haitians, Hispanics and poor in this region: stay in your place or move out. There is no room for

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22 Id. at 8, 12.

23 Id. at 8, 13-14.

24 Id. at 8, 16.

25 Id. at 8,15.

26 ". . . the Collier Plan includes areas of the former base that have already been transferred to Miami-Dade or are proposed to be transferred to the School Board of Miami-Dade County. Collier's plan is to exchange these areas, comprising an estimated total of about 75 acres, for equivalent acreage on or off the site." SEIS, at 2.4-11.

you in this "new" community, unless, of course, you want to serve those now cloaked in the cape of federal largess.[27]

This is hardly a "mixed use" project, as the Air Force now wants to call it. It has one other element: an office/commercial complex intended only to "provide convenience services for the employees within the district" and a research/development park for theoretical and applied research. No one seriously concerned about the fate of the people of the Homestead area and the quality and nature of the jobs they need would make this proposal for this location. It was, as a substantive and political matter, shoehorned into the SEIS to serve another, more insidious agenda.[28]

Let there be no illusions. This Plan and the conduct of its advocates, including federal officials, is nothing more than "racial steering"; a "practice by which real estate brokers and agents preserve and encourage patterns of racial segregation . . ." Havens Realty Corp. v. Coleman, 455 U.S. 363, 366, 367 n. 1 (1982); Trafficante v. Metropolitan Life, 409 U.S. 205

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[27] Even the Air Force, in the SEIS, recognized that the Collier Plan would produce tens of thousands of fewer jobs at full buildout than the Airport proposal, and would generate more than $500 million less in reuse-related earnings. Draft SEIS, Summary, December 1999, at 36-37. The Airport proposal not only would generate more jobs and more economic development power overall, but would create skilled jobs that would provide meaningful training and long term security to the poor and minority populations. Id. at 20.

[28] Interior and the Colliers have a long history of secret dealing in Florida, Arizona -- while the Secretary was Governor -- and in California. In 1999, the Colliers sought to "swap" with Interior a portion of its mineral interest in Great Cypress in exchange for a military base in San Diego. Despite never having submitted a plan to the city, the Colliers conducted secret meetings with Interior, completely circumventing the BRAC process. In essence, Colliers tried to bully their way into the California market by throwing names around. According to Christine Shingleton, Executive Director of the LRA for the Tustin Marine Corps Station in Orange County, CA. she has heard the Colliers say: "we've talked to Al Gore, and we've talked to Bruce Babbitt. This is a done deal and we can get the Senate and the Congress to do what we want them to do." Sean Holton, *Collier Who? Californians Leery of Land Swap with Florida Family*, Orlando Sentinel, May 8, 1996, at A1. San Diego ended up telling the Colliers no. The same occurred in Orlando when the Mayor refused the Collier's plan because the city had not been kept a part of the process. Sean Holton et al., *Orlando Kills Deal to Swap Navy Base*, Orlando Sentinel, September 13, 1996, at A1. The Colliers had held discussions with Interior for months without any city involvement. Interior even ordered a secret appraisal done of the minerals and oil under Big Cypress.

(1972). See generally Note, *Racial Steering: The Real Estate Broker and Title VIII*, 85 Yale L.J. 808 (1976). The Collier Plan is a "steering practice" the effect of which, if not its intention, is to deny your Petitioners elementary, equal opportunities and their civil rights.

Interior, CEQ, the Air Force and the Colliers: Hindering the Due Course of Justice. When the Collier Plan was first discussed publicly (before it was submitted to the Air Force on May 17, 1999), its representatives claimed to have met with Interior officials. Knowing that Collier had initiated a formal request to begin mining exploration in the Big Cypress Preserve, and that the "swap" of land envisioned by Collier required extensive financial, environmental and public need review, we filed a Freedom of Information Act request on April 21, 1999 in order to determine exactly what had occurred, been promised, approved, and under consideration. After eight weeks of waiting, we were denied most of what we requested. On July 1, 1999, we filed an appeal of the FOIA determination. Interior has yet to respond to the appeal and continues to remain silent about its decision-making process with the Collier family, including what should be formal, public proceedings involving land swaps, environmental studies, status of mineral exploration, and land valuation. The Collier Plan, nevertheless, appeared formally in the SEIS without explanation or the availability of a public review process.

The repression of information so central to Petitioners' rights is not merely a denial of one of the fundamental purposes of the Freedom of Information Act: to "ensure an informed citizenry, vital to the functioning of a democracy." F.B.I. v. Abramson, 456 U.S. 615, 621 (1982). It also interferes intentionally with your Petitioners' right to "the due course of justice"; the right to know "key facts which would form the basis of the[ir] claim for redress" upon which the right to petition the government and to seek meaningful judicial review are intrinsically based. See Bell v. City of Milwaukee, 746 F2d 1205, 1261-62 (7th Cir. 1984). Interior and the CEQ cannot secretly protect the Colliers because they -- or the Colliers -- also "controlled or influenced the administration . . . of justice," in all its forms, and reflected "indifference" to Petitioner's condition because of their racial, ethnic or class status. Id. at 64. In our view, that is precisely what the Colliers and the agencies have and continue to do, with the Air Force's acquiescence.[29]

The Attorney General's Duty. We set out in our Petition the factual and legal basis for our claims and the need for Extraordinary Relief. We have reiterated and expanded those facts and claims here and in our Complaint to Acting Assistant Attorney General Lee. As lawyers, seeking the intervention of the Attorney General, we must confine ourselves to the use of words and reasoning that resonate in logic and experience and law. But given the gravity of what is at stake, and the growing shadow of arbitrary, irreparable harm to the people of these South Florida communities, we ask respectfully that you listen closely to the words of those who are poised to suffocate their way of life.

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[29] Id.

Nathaniel Reed, an airport opponent, described those who share his view in *Republicans who live in Ocean Reef and elsewhere in Key Largo,* Miami Herald, Oct. 8, 1999. He continued unabashedly:

> They are from all over the nation, they are major contributors to the party, they can reach members of Congress - and they definitely do not want 747's coming in every few minutes over their homes. Id.

Wallowing in his own conceit, Reed -- the quintessential, distant conservator of his own comfort -- or his neighbors must also be selectively deaf. They cannot hear the roar of the Learjet as it takes off and lands at Ocean Reef Club Airport. The only airport noise they can hear becomes deafening when it intrudes on their golf time, the gentle quietude of the white sand and gentle ocean at the Country Club, and when it gives life and work and dignity to those far distant, in Carol Browner's "out there": Homestead and Florida City.

"Urgent", a recent flyer from Ocean Reef stated to its members: "We are asking for a minimum of $500 but would very much like to have $1,000-2,000 per Ocean Reef family . . . We believe it will be very effective if your correspondence to your Congressman was printed on your northern stationary."[30] It was recognized long ago and reaffirmed here: "the environmentalists in any given area seemed very easy to identify. They were, quite simply, members of the local aristocracy, often living at the end of long, winding country roads. They had learned the lessons of conspicuous consumption and had allowed a certain amount of genteel rusticity to enter their lives. Instead of imitating Greeks and Romans, they seemed to be patterning themselves after the English gentry."[31]

The Everglades Coalition, its members and others, those also living at a distance, reflect the same attitude. As [redacted] in Key Largo put it to those assembled:

> We vehemently oppose an airport in Homestead . . .I have enjoyed much peace and quiet since the Air Force base was destroyed by Hurricane Andrew. It disturbs my peace.[32]

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30 Ocean Reef Club, February 1, 2000.

31 William Tucker, *Environmentalism and the Leisure Class. Protecting Birds, Fishes and Above All, Social Privilege*, Harper's Magazine, December 1977, at 1.

32 SEIS Public Hearing Transcript, South Dade Senior High School, Homestead, Florida, February 1 2000, at 137-137

So little has changed. "That was the way [they] always seemed to favor the status quo. For people who found the present circumstances to their liking, it offered the extraordinary opportunity to combine the qualities of virtue and selfishness."[33]

The Sierra Club, the Wilderness Society and others have converted the rhetorical disdain for the people of Homestead and Florida City into conduct calculated to deny their most elementary civil rights. They bring power and influence to the table. Mr. Reed represents symbolically only its irrepressible conceit. Their annual reports, brochures and regular newsletters have the gloss and refinement of General Motors or Home Depot. Their financial resources, legal, political and public relations tactics surpass the skill and influence of most. They are doing it with the imprimatur of federal encouragement, benefitted by a tax-exempt status. Let there be no illusions: shrouded in the advocacy of "environmental" values is the power and ability to spurn the elemental needs of the poor and minority people. They are doing it here. "If we can't stop it one way," [redacted] an Everglades Coalition member said, "we are going to take you to court and we'll tie it up."[34] It is the dark side of these values.[35] It also provides the moral imperative that supports the legal reason we filed our Petition for Extraordinary Relief on August 19, 1999 and now are compelled to go directly to the Civil Rights Division.

Behind this conduct of conceit, wealth and racial and class animus is the power and formal authority of Interior, CEQ and EPA, the governmental imprimatur provided to the environmental organizations by tax-exempt status and the specter of financial assistance of public land being transferred, once again, to the Colliers and used for a private purpose neither sought by nor beneficial to the local community.

CONCLUSION

Amidst the disrespectful, disquieting and overt clamor of airport opponents, the Reverend [redacted], rose slowly during the February 1, 2000 public hearing and spoke in the gravest and most soulful of manner:

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33 William Tucker, *Environmentalism and the Leisure Class, Protecting Birds, Fishes, and Above All, Social Privilege*, Harper's Magazine, December 1977, 49.

34 SEIS Public Hearing Transcript, at 154

35 What the environmental groups are attempting to do can be described as "a deliberate attempt . . . to perpetuate [their] own values and protect [their] own life style at the expense of the poor and underprivileged.'" Richard Lazarus, *Pursuing 'Environmental Justice': The Distributional Effects of Environmental Protection*, 87 Nw. U.L. Rev. 787, 788 (1993); See also R. Gregory Roberts, *Environmental Justice and Community Empowerment*, 48 Am. U.L. Rev. 229, 232-234 (1998).

> I see these mothers . . . When you see the hopelessness in their eyes . . .They have skills, but they don't have jobs . . . The people need jobs. Please, listen to the heartbeat of this community.[36]

We sought in our Petition to describe to you, as early as we could, the harsh manner, well beyond the harsh rhetoric, that government officials and private parties had relied upon to deny the Petitioner's civil rights. We also sought -- and still do -- an investigation into their conduct. We got only Ms. Schiffer's letter in reply. We have sent it to the Reverend [redacted] and his parishioners.

We are discomforted deeply by the Justice Department's response. It has a duty under law that, in historical terms and under your tenure, it has fulfilled vigorously and compassionately in other settings. We have sought conscientiously, through and since our Petition of August 10, 1999, to invoke that history and duty. It is, in the end, not only a mere matter of "statutory authority" -- as Ms. Schiffer defensively puts it -- but of vigorous statutory interpretation, the good faith, fair exercise of discretion within the framework of well-established, judicially recognized duties, and, most importantly, the will to act decisively and affirmatively. When it wants to, the Department of Justice does each of these daily in matters of lesser consequence than protecting the lives of the poor, the elderly and people of color.

Respectfully submitted,

Harry C. McPherson
Harry C. McPherson

Neil Thomas Proto
Neil Thomas Proto

Lawrence E. Levinson
Lawrence E. Levinson

Counsel for the Equal Justice Coalition
Florida City,
City of Homestead,
Coalition of Florida Farmworker Organizations, Inc.,
Dade County Farm Bureau,
New Visions for South Dade, Inc.,
Greater New Covenant Missionary Baptist Church,
RCH - Haitian Community Radio, and
Homestead Air Base Developers, Inc.

Attachment
cc: Lois Schiffer, Assistant Attorney General, Environmental and Natural Resources Division(with Attachment)
Bill Lann Lee, Assistant Attorney General, Civil Rights Division

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[36] SEIS Public Hearing Transcript, at 130-131

BEFORE THE CIVIL RIGHTS DIVISION
OF THE UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C.

COMPLAINT FOR SPECIAL RELIEF

TO

INVESTIGATE AND REMEDY
VIOLATIONS OF THE CIVIL RIGHTS OF
INDIVIDUAL MEMBERS OF THE EQUAL JUSTICE COALITION
BY CERTAIN NAMED AND UNNAMED TAX-EXEMPT ORGANIZATIONS,
CERTAIN NAMED AND UNNAMED FEDERAL AGENCIES AND OFFICIALS,
AND THE COLLIER RESOURCES COMPANY

March 30, 2000

INTRODUCTION

COMES NOW YOUR COMPLAINANTS, the Equal Justice Coalition, comprised of the Florida municipalities of Florida City and Homestead; the Coalition of Florida Farmworker Organizations, Inc., a coalition of organizations dedicated to improving the living and working conditions of migrant and seasonal workers and the rural poor; the Dade County Farm Bureau, which works to improve the economic well-being of over 3,000 farming families; New Visions for South Dade, Inc., an organization dedicated to the empowerment of minority people in the region; Greater New Covenant Missionary Baptist Church which has over 800 members; RCH - Haitian Community Radio; and the Homestead Air Base Developers, Inc., a minority owned business enterprise that is authorized by Miami-Dade County, the federally designated Local Redevelopment Authority ("LRA"), to develop the Homestead Air Force Base. The Complainants are comprised primarily of African-American, Haitian, Hispanic, Caribbean, low-income, unemployed and elderly residents of these municipalities, and the Mayors of Florida City (Honorable Otis Wallace) and Homestead (Honorable Steve Shiver).

The Complainants, by and through the undersigned, hereby seek a formal investigation into violations of the civil rights of these individuals by not-for-profit, tax-exempt organizations, including the Sierra Club and the Everglades Coalition,[1] acting alone under color of law, and in a civil conspiracy with particular individuals within the Department of Interior ("Interior") and the Council for Environmental Quality ("CEQ"), by and with the Collier Resources Company, and by and with currently unknown public and private individuals, under Title VI of the Civil Rights Act, 42 U.S.C. §§ 1983, 1985(3), 2000(d) (2000), the Fifth and Fourteenth Amendments to the United States Constitution, and President Clinton's Executive Order 12898, 59 Fed. Reg. 7629 (1994), ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations").

Jurisdiction of the Civil Rights Division. The Civil Rights Division of the United States Department of Justice was established for the purpose of enforcing all federal statutes, Executive Orders, and Constitutional provisions that prohibit exclusion and discrimination on the basis of race, sex, age, handicap, religion, national origin, and low income. See 28 C.F.R. § 0.50(a) (2000). In the face of the insidious conduct by institutions preeminently powerful to attain their particularized environmental and conservation purposes and with a recognized ability to expend considerable funds in order to do so, and in light of the totally ineffectual manner with which such conduct has been treated thus far by the government, we are constrained to add that the Civil Rights Division's

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[1] The Everglades Coalition is composed of, upon information and belief, the Broward County Sierra Club, Clean Water Action, Defenders of Wildlife, Environmental Defense Fund, Everglades Coordinating Council, the Everglades Foundation, Inc., Fisherman Against Destruction of the Environment, Florida Bay Initiative, Florida Bay Fishing Holders Association, Florida Wildlife Federation, Friends of the Everglades, National Parks and Conservation Association, Natural Resources Defense Council, Sierra Club, and World Wildlife Fund. Many, if not all of these institutions, are organized as not-for-profit under 26 U.S.C. § 501(c)(4) (2000).

mandate "is to enforce the letter and spirit of the civil rights laws, without fear or favor, on behalf of all Americans." Foreword, Civil Rights Division Activities and Programs (emphasis added).

Consistent with this mandate, the Civil Rights Division is charged with undertaking investigations into violations of civil rights upon complaint from private citizens. 28 C.F.R. § 0.50(b) (2000). The conduct of federal officials and private individuals, the Collier Resources Company and certain not-for-profit, tax-exempt organizations alleged in this complaint touches the very core of this Division's mission. We seek an investigation of this conduct, followed by the appropriate enforcement action. In light of the history of this controversy, as set out in our August 10, 1999 Petition to the Attorney General and our reply submitted today, we have no other recourse within this Administration.

Procedural Background. On August 10, 1999, Complainants submitted a Petition for Extraordinary Relief to The Honorable Janet Reno, Attorney General of the United States. The Petition, a copy of which is attached as Exhibit 1, formally requested the Department of Justice ("Justice") to intervene in the "unjustifiable, continuous imposition of irreparable harm to the health and welfare of the poor, underemployed, unemployed, Caucasian, African American, Carribean and Hispanic" residents of Homestead and Florida City as a result of the deliberate abuse of process by the named and unnamed parties in this complaint regarding the disposal and reuse of Homestead Air Force Base ("Homestead AFB" or "the Base"). The Petition also sought an injunction against the violations of the Base Closure and Realignment Act of 1990, Pub. L. No. 101-510 ("BRAC"), the National Environmental Protection Act ("NEPA"), Executive Order 12898, 59 Fed. Reg. 7629 (1994), (Environmental Justice), and Title VI of the Civil Rights Act, 42 U.S.C. § 2000(d).

On December 27, 1999, Assistant Attorney General Lois Schiffer, Environment and Natural Resources Division, responded to our Petition.[2] We set forth our discomfort with Ms. Schiffer's response and additional factual and legal arguments to the ongoing, unaddressed and the new violations of the Complainants' civil rights in a letter submitted today to the Attorney General.[3] Ms. Schiffer not only failed to respond to Complainant's substantive civil rights claims but laid bare the inherent bias in the Environment and Natural Resources Division's fundamental mission when particular, historically cognizable civil rights violations are alleged rather than the conventional violation of environmental statutes. We believe that the assertion of jurisdiction by the Environment and Natural Resources Division -- which we did not request -- was misplaced. Although we identified credible, legitimate facts to support our request for a reasoned, probing investigation on behalf of poor and minority people of violations of their civil rights, the Environment and Natural Resources Division, demonstrating its limitations with singular clarity, all but ignored these facts and instead offered a paltry and perfunctory response confined largely to the effect that the Air Force would conduct some of its activities in Spanish. Consequently, Complainants were compelled to submit the instant Complaint directly to the Civil Rights Division.

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[2] See Letter from Lois Schiffer, Assistant Attorney General to Harry C. McPherson, Verner, Liipfert, Bernhard, McPherson and Hand of December 27, 1999, attached as Exhibit 2.

[3] See Letter from Harry C. McPherson, et al., Verner, Liipfert, Bernhard, McPherson and Hand to Honorable Janet Reno of March 30, 2000, attached as Exhibit 3. You also were copied on the letter.

I.

STATEMENT OF FACTS

Homestead Air Force Base: The Life-Blood of the Community. Homestead AFB is located approximately 20 miles southwest of Miami and within five miles of the cities of Homestead and Florida City. It lies in an economically depressed area which the Department of Housing and Urban Development considers among the poorest in the nation. More than 37% of Florida City and 30% of the people in Homestead are below the poverty level: Unemployment in Florida City is a staggering 15%, more than double the unemployment rate in Miami-Dade County. The number of individuals on welfare are increasing; charity cases at the only acute care hospital within 13 miles are 150% more than in the County. The hospital, already strained by 30,000 emergency cases a year, is among the busiest in the nation.[4]

For each of these municipalities, and the poor and minority populations within them, Homestead AFB represented the best hope for a livelihood for themselves and their families. It was the "economic base" in the area, generating 6,000 active duty jobs, 2,000 civilian jobs, and 7,000 retirees and dependents. In turn, these created secondary jobs and economic growth valued at $400 million annually.[5] Economic benefits

As a result of the devastating effects of Hurricane Andrew in 1992 and other military considerations, Homestead AFB was recommended for realignment by the 1993 Defense Base Closure and Realignment Commission, and finally scheduled for reconversion on March 31, 1994 pursuant to BRAC. For all intents and purposes, Homestead AFB was closed. The vast majority of the activities at the Base were moved to other bases. The 482nd fighter wing (Air Force Reserves), the 301st Rescue Squadron, the Florida National Guard, the Drug Enforcement Administration, and the U.S. Customs Service, remain on a fraction of the Base. Their missions, importantly, depend on the continuing utilization of Homestead AFB as a commercial and military airport.[6]

The Promise of Reuse. Recognizing the crucial economic and social needs of the local communities affected by the closure of the Base, President Clinton and then Secretary of Defense William Perry publicly committed to ensuring the swift realignment of Homestead AFB under BRAC. In July 1993, Secretary Perry stated that Homestead would be the Department of Defense's

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4 *Immigrants Rebuild a City That Others Fled*, New York Times, February 21, 2000, § A, at 1; *Now Is the Time: Places Left Behind in the New Economy*, U.S. Department of Housing and Urban Development, April 1999; *Unmasking Poverty*, New York Times, April 29, 1999.

5 Department of the Air Force, Socioeconomic Impact Analysis Study, Disposal and Reuse of Homestead Air Force Base, January 1994, at 3-5.

6 Department of the Air Force, Final Environmental Impact Statement, Disposal and Reuse of Homestead Air Force Base, Florida, February 1994, at 2-4, 2-18 ("FEIS").

"model base" under BRAC for expedited funding and re-use.[7] The government, he said, would "supply substantially more grant aid, substantially more support staff" to accelerate the transfer. Id. The principle element in the re-use plan, then as well as now, was a commercial and government purpose airport – a plan which Secretary Perry told the unemployed, poor and minority individuals of Homestead "is well launched, and we should fully support it."[8]

President Clinton only enhanced the community's reliance on his promise for swift reconversion and reiterated, as a legal matter, the seemingly solid basis for doing so. He stated in 1993 that the purpose of BRAC is to accelerate re-use in accordance with the precise kind of important economic and cultural objectives then poised for accomplishment at Homestead.[9] Within the President's National Economic Council, a special portfolio was established to assure expeditious attainment of such an objective.

Hope and reasonable expectations, enhanced materially by the attitude and legal framework set out by public officials, seemed solidly grounded in fact and law.

The Community Supported Reuse Plan. The property to be disposed of by the Air Force for reuse covers approximately 2,055 acres which includes all or parts of the airfield, aviation support, industrial, commercial, residential and recreation areas of the Base.[10] To effectuate the disposal and reuse of this property consistent with the procedures implemented by BRAC, the Air Force reviewed numerous documents and plans suggested by a variety of entities, including the Homestead AFB Regional Economic Impact and Redevelopment Plan Team, Metro Dade County (the LRA), and Dade County Aviation Department, in its development of the proposed and now approved reuse Plan.[11] Twenty federal agencies, nine state agencies, twenty regional agencies and ten private organizations were in consultation with the Air Force in the preparation of the reuse Plan.[12] The reuse Plan, as proposed, formally included:

Was EPA involved?

(i) The Homestead International Technical Research and Aviation Center (HITRAC)(this includes a regional airport, general aviation facilities, a commercial terminal, air freight, general industrial warehouse distribution, express cargo hubs, and aviation maintenance and training facilities);

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7 See *Air Base Put on Fast Track for Renewal*, Miami Herald, July 8, 1993, at B1.

8 Id.

9 The President's Five-Part Base Closure Community Revitalization Program requires jobs-centered property disposal; fast-track cleanup; base transition coordinators; easy access to transition and redevelopment help; and larger economic development planning grants and technical assistance (July 2, 1993).

10 FEIS, at S-1.

11 Department of the Air Force, Record of Decision for Partial Disposal of Homestead Air Force Base, Florida, October 26, 1994 ("ROD"), attached as Exhibit 4.

12 FEIS, at 5-1, 5-2.

(ii) An agro-industrial complex;

(iii) World Teleconference Center;

(iv) Office parks;

(v) An upward mobility training and education center;

(vi) A district park; and

(vii) Housing to alleviate South Dade's housing supply problem at all levels; traditional housing, low-income housing and housing for the homeless.[13]

The reuse Plan would yield approximately 7,800 direct jobs, 5,200 secondary jobs and 1,220 peak year primary and secondary construction jobs.[14] Not surprisingly, an overwhelming majority of South-Dade residents support the reuse Plan; its elected officials voicing clear, unequivocal support when Miami-Dade County approved the Plan.

Despite the needs and desires of the local community, however, and the unequivocal findings of the Air Force and the Federal Aviation Administration ("FAA") that the development of a commercial airport at Homestead will indeed substantially alleviate the economic and social suffering of the local communities, Homestead AFB remains idle.[15] The failure to redevelop the Base in a fair and timely manner results directly from the deliberate and prejudicial conduct of officials within the CEQ and Interior, who have conspired with various environmental organizations and the Collier Resources Company to prevent the construction of a commercial airport at Homestead, the approved reuse Plan. They have disenfranchised the poor and their elected officials. Only one outcome was and is acceptable to them -- no military and commercial airport at Homestead -- and their method to accomplish it is to use the NEPA review process as a tool for abuse and as a means of shielding their prejudicial and discriminatory conduct from scrutiny.

Allegation: Conspiracy

The NEPA Process: First Round. The process began well enough with the Air Force being selected as lead agency for purposes of preparing the Environmental Impact Statement ("EIS") as required by NEPA. The Notice of Intent to prepare an EIS for the disposal and reuse of Homestead was published in the Federal Register on July 20, 1993. The scoping process began with a public

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13 ROD, at 7-8.

14 FEIS, at S-17.

15 See Department of the Air Force, Summary Draft Supplemental Environmental Impact Statement, Disposal of Portions of the Former Homestead Air Force Base, Florida, December 1999 ("SEIS, Summary"), attached as Exhibit 5.

meeting on September 14, 1993.[16] A public hearing on the scope of the EIS was held in Homestead, Florida on December 1, 1993 and further public comment was invited.[17]

As required by law, the Air Force examined thoroughly and carefully the proposed Plan, the two alternatives to it and the no-action alternative. The two alternatives were (i) an aviation/industrial/institutional alternative, including more industrial uses, a corrections center, more acreage in educational use, and a residential area; and (ii) an aviation/public facilities/recreation alternative, including a greater percentage for public facilities and recreation uses, and a national veterans cemetery.[18] Following the EIS's completion, the Air Force presented its findings in a draft EIS and invited public comment. All of the above alternatives were made available for public review between November 1993 and January 1994.

Other Federal agencies, including the Department of Interior, commented on the plan. Interior provided comments to the draft EIS through its regional office in Atlanta on January 13, 1994. Interior urged that the draft EIS evaluate whether the airport at Homestead could fulfill the needs being provided by the Jetport (Dade-Collier Training Airport) located in the Big Cypress National Preserve. Interior stated that "[i]t would appear that the reuse of Homestead Airport could be an acceptable replacement, and this action should be considered in the final EIS."[19] Interior supported an airport at Homestead. No comments were received by any local, regional, or national environmental groups.

The final EIS was completed on February 1994 and the Record of Decision ("ROD") was entered on October 26, 1994. More than fourteen (14) months transpired between the Notice of Intent and the ROD during which time a thorough analysis occurred and a full and fair opportunity for public comment. Participation was provided and acted upon promptly and thoughtfully by many federal, state and regional agencies, individuals and groups. The compelling moral, social and economic imperatives -- with the imposition of essential environmental conditions and a full understanding of impacts -- was presented with clarity to the Air Force and others as a basis for decision. Consistent with Congress' intent and the President's and Secretary's public declaration, the Air Force also had substantially complied with its own requirement to complete the NEPA process "[n]ot later than 12 months from receipt of the redevelopment plan."[20]

In the ROD, the Air Force evaluated the potential environmental issues based upon the proposed action and the alternatives studied. The ROD, along with the EIS, examined the effect of noise on the surrounding area and people.[21] Significant conditions concerning the clean-up and use

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16 FEIS, at S-2, 1-6.

17 Id.

18 Id. at 2-22.

19 Letter from James E. Lee, Regional Environmental Officer, Department of Interior to Department of the Air Force of January 13, 1994.

20 32 C.F.R. §175.7(d)(3) (2000).

21 ROD, supra, note 11, at 15; FEIS, supra, note 6, at 3-114 to 3-126.

of the Base were imposed.[22] The need for subsequent federal approvals (i.e., FAA), as the Base was developed, was recognized clearly.[23] The Air Force concluded that transfer to Miami-Dade County was warranted for the reuse of the Base as a commercial airport.[24] NEPA had served its purpose.

Not, however, for everyone. On the verge of final approval and transfer, Homestead AFB became hostage to environmental, political gamesmanship; that is, the use of this country's environmental laws to manipulate and abuse the procedures and substantive purposes of BRAC and the President's Economic Program formalized pursuant to BRAC and NEPA, and to violate the civil and constitutional rights of your Complainants. It is from this juncture forward that those violations matured. In its effort to comply with the law, the Air Force fell prey to the prowess of Interior officials, the CEQ and those in the private sector intent on preserving the status quo at the cost of violating the law.

The NEPA Process: Second Round. In July 1996 -- two years after the ROD on the EIS – George T. Frampton, Interior's Assistant Secretary for Fish and Wildlife and Parks, emerged full boar. Writing to both the private, non-profit World Wildlife Fund and the FAA on the same day, Secretary Frampton -- now the Chairman of the CEQ -- focused not on the rights and interests of the poor and minority people of South Florida whose livelihood depends on the reuse of Homestead but on "the growing concern of the Federal agencies involved in the Administration's historic plan to protect and restore the Everglades and the ecosystem of South Florida [with] the development of a commercial airport at Homestead Air Force Base in Dade County."[25] Assistant Secretary Frampton insisted further that:

> to ensure that redevelopment of Homestead does not conflict with the ongoing efforts to restore and improve the environment of South Florida . . . any redevelopment plan recognize the special considerations that must be given to the National Parks and other sensitive areas surrounding the base.[26]

The intent was clear: Secretary Frampton wanted the transfer to Miami-Dade County delayed. As described below, his bias was articulated before he entered government and assumed a public trust. He also provided the legal shield for environmental groups and the CEQ to ignore, and make subservient to the narrow recreational and aesthetic desires of those with greater wealth, mobility and power, the needs of the poor and minorities in this area. The Everglades Coalition, relying on Secretary Frampton's rationale, further enlarged the shield and appealed directly to the CEQ. It organized meetings at the White House. The EIS, ROD, and the numerous public hearings,

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22 ROD, supra, note 11, at 15-18.

23 Id. at 13.

24 Id.

25 Letter from George T. Frampton to David Hinson, FAA Administrator of July 22, 1996 (referenced in letter from Bradford H. Sewell, Paul, Weiss, Rifkin, Wharton and Garrison to William Perry, Secretary of Defense of October 28, 1996).

26 Id.

meetings, and opportunities for participation available to Interior, the CEQ and the Everglades Coalition or its individual members, were rendered legally irrelevant.

Bowing to the pressure and influence of the CEQ and the Everglades Coalition and its individual members, exercised wholly out of the public purview, the Air Force initiated in December 1997 a process to prepare a Supplemental Environmental Impact Statement ("SEIS"). One searches in vain for an articulated, noticed, public rationale for this decision. This was an exercise not of authority and reasoned decision-making but of sheer power; manipulating and channeling the poor into only one direction: seek legal redress and cause precisely the delay Secretary Frampton, the CEQ, and the Everglades Coalition wanted or acquiesce in a process.

Under only the most convenient and expedient interpretations, the Air Force, once it decided to prepare an SEIS, was obligated to publish this decision in the Federal Register and the general issues to be addressed.[27] However, the Air Force was not to conduct a new scoping process. The scope already had been determined for this Federal action in the EIS and the Air Force was constrained from enlarging or materially altering it.[28]

On February 27, 1998, the Air Force published its Notice of Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) for the Disposal of Portions of the Former Homestead Air Force Base (AFB), Florida.[29] On May 17, 1999 -- fifteen months after the Notice to undertake the SEIS was published and the document's preparation supposedly well along -- the Collier Resources Company submitted a plan to the Air Force "as a possible reasonable commercial development alternative . . ." that contemplates a "transfer of the Homestead properties targeted for disposal in exchange for certain subsurface interests held by the Colliers in the Big Cypress National Preserve."[30]

The Collier Plan encompasses 717 acres and includes an Executive Golf Course and Executive Club House (with tennis courts and Pro shop), a Championship Golf Course and Championship Club House (with tennis courts and practice facility), a limited service Hotel (for business and limited stay travelers), weekly stay villas for the vacation traveler complete with on-site amenities, tennis courts, swimming pools, 1,000 Luxury RV (in excess of $100,000) pads, a self contained movie theater and retail center (grocery, dry cleaner, boutique, fine dinning), a water park, and a golf-oriented hotel. It is, as a practical matter, a detached enclave for wealth; the equivalent

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27 See, CEQ regulations, 40 C.F.R. § 1501.7 (2000); Air Force Instruction 32-7061, *The Environmental Impact Analysis Process*; FAA Orders 1050.1D, *Policies and Procedures for Considering Environmental Impacts*, and 5050.4A, *Airport Environmental Handbook.*

28 40 C.F.R. § 1502.9(c)(4)(2000).

29 63 Fed. Reg. 10,006 (1998).

30 The history in Florida and elsewhere of the Collier Family and the actions of its Company are described in our letter to Attorney General Reno, Exhibit 1. See also "Homestead Air Force Base - A Reasonable Redevelopment Alternative", Collier Resources Company, May 17, 1999 ("Collier Plan").

Despite this finding, and as described below, the environmental groups and other Federal agencies and officials have decried the result and have continued their assault upon the lawful process and the rights of the Complainants. A process now seven years in duration has, and is continuing, to be manipulated by those in and out of government to deliberately deprive your Complainants of their rights and privileges under the Constitution. How much pain and suffering and disappointment and deprivation of essential needs must the poor and minorities and elderly of this area endure before one agency of this Administration intercedes to defend their civil rights and uphold the meaning of fairness under law?

II.

CIVIL RIGHTS VIOLATIONS BY NAMED AND UNNAMED WRONGDOERS

This Complaint is premised on the violations of Complainant's constitutional rights to due process and equal protection under the 5th and 14th Amendments to the United States Constitution, by certain Federal and state tax-exempt environmental organizations, federal officials and the Collier Resources Co, acting alone under color of law and in conspiracy with one or more conspirators, and on violations of Complainant's rights under Title VI of the Civil Rights Act, 42 U.S.C. § 2000(d).

Legal Framework. The Civil Rights Act, 42 U.S.C. § 1981 et seq., generally imposes liability upon persons who cause others to be deprived of their rights, privileges or immunities secured by the Constitution and statutes of the United States. See 42 U.S.C. §§ 1983, 1985. Specifically, Section 1983 provides that

> [e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. Federal officials, acting in conspiracy with state actors, are also subject to liability under this provision. Jackson v. the Statler Foundation, 496 F.2d 623, 635 (2nd Cir. 1973), citing Kletschka v. Driver, 411 F2d 436, 448 and 49 (2nd Cir. 1969).

Section 1985(3) broadens the reach of the Civil Rights Act and provides a cause of action against persons who conspire, whether or not under color of state law, to deprive any person or class of persons of the equal protection of the law, or equal privileges and immunities under the law. Section 1985(3) provides as follows:

> If two or more persons in any State or Territory conspire, . . .for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal

> privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws . . .; in any case of conspiracy set forth in this section, . . . the party injured or deprived may have an action for recovery of damages, . . . against one or more of the conspirators.

42 U.S.C. § 1985(3).

Title VI of the Civil Rights Act of 1964 provides a substantive right to be free from discrimination under any program or activity receiving federal financial assistance. Title VI provides that:

> [n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000(d).

Closely paralleling Title VI, and drawing from it its moral and legal imperative, is Executive Order 12898, 59 Fed. Reg. 7629 (1994) (Environmental Justice). It also is based on the same racial and political animus reflected in the conduct of public and private individuals here and in the fundamentally different conceptions of what constitutes "justice" and defines "environmental discrimination" that historically tempered the tension between environmental groups and those whose civil rights and elementary subsistence were deliberately ignored by them. Fundamental to all federal conduct is the duty to ensure that:

> [e]ach Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons . . . the benefits of, or subjecting persons . . to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Executive Order 12898, 59 Fed. Reg. 7629, (1994), § 2.2 (Emphasis added).

Wrongdoing by Tax-Exempt Environmental Groups. The Everglades Coalition and its individual members have, acting alone under color of state law and in conspiracy with certain named and unnamed federal officials and the Collier Resources Company, and through their abuse of the NEPA process and their campaign to influence improperly the administration of justice by the Air Force, CEQ and Interior, violated Complainant's rights to due process and equal protection. As "shadow governments" upon whom special federal and state tax benefits have been conferred to permit them to further public purposes and to serve quasi-public functions, these organizations are "state actors." See Jackson v. The Statler Foundation, 496 F.2d 623, 627, 632-34 (2nd Cir. 1973).

Acting alone as state actors, and in conspiracy with others, these organizations have violated the due process and equal protection rights of the Complainants through their deliberate efforts to stall the NEPA process and prevent the transfer and reuse of Homestead AFB as a regional airport. In 1996, the Everglades Coalition began writing to the Secretary of the Air Force "about alleged inaccuracies and inadequacies in the Final EIS."[36] The Coalition demanded that the Air Force prepare a SEIS, even going so far as to threaten a lawsuit.[37] Yet, the request for an SEIS was merely the legal justification for the outcome that the Coalition really wanted; not further environmental review, but further delay and no airport.

When the draft SEIS was released in December 1999, and the recommendation for an airport was sustained, Alan Farago, Chair of the Sierra Club Miami Group, stated "[w]e feel we are at war to protect our national parks, and we feel we need time to prepare for battle."[38] The environmental groups did not care that a thorough, reasoned evaluation of the impacts of the reuse Plan and all its alternatives had been done. Their livelihood is not at stake. Shrouded in the advocacy of "environmental" values is the power and ability to squelch the poor and minority people. In so doing, they have deliberately trampled the rights and interests of the poor and minority people and have exploited and reinforced their historic powerlessness. See Indianapolis Minority Contractors Association, Inc. v. Wiley, 187 F. 3d 743, 751-752 (7th Cir. 1999). As [redacted] an Everglades Coalition member put it, "If we can't stop it one way, we are going to take you to court and we'll tie it up."[39] This is the dark side of these values; "a deliberate attempt . . . to perpetuate . . . and protect [their] own life style at the expense of the poor and underprivileged."[40] It also provides the moral imperative that supports the legal reason we filed our Petition for Extraordinary Relief on August 19, 1999 and have been compelled to file the instant Complaint.

These groups in conspiring with Interior, CEQ and the Collier Resources Company secretly put forth the Collier Plan as a formal alternative reuse plan. They had access and affected a formal government process in a manner wholly unavailable to the Complainants. Such actions strike at the heart of Complainants' rights to equal protection under the Fourteenth Amendment. The Supreme Court has long held that equal protection demands, at the very least, "that racial classifications . . . be subjected to the most rigid scrutiny. Loving v. Virginia, 388 U.S. 1, 11 (1967). Such scrutiny is appropriate here.

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36 Draft SEIS, Summary, at 4.

37 *Not Cleared For Takeoff*, Miami New Times, December 26, 1996.

38 *More Time Sought on Fate of Air Base*, Miami Herald, January 6, 2000.

39 Draft SEIS Public Hearing Transcript, Homestead, Florida, February 1, 2000, at 154, attached as Exhibit 6.

40 Richard Lazarus, *Pursuing 'Environmental Justice': The Distributional Effects of Environmental Protection*, 87 Nw. U.L. Rev. 787, 788 (1993); See also R. Gregory Roberts, *Environmental Justice and Community Empowerment*, 48 Am. U.L. Rev. 229, 232-234 (1998).

The environmental groups also have violated Complainant's rights under Title VI of the Civil Rights Act of 1964. As federal tax-exempt organizations that are recipients of "Federal financial assistance" they are prohibited from discriminating against poor and minority people in their programs. See McGlotten v. Connally, 338 F.Supp 448, 462 (D.D.C. 1972). Supported and encouraged by Federal financial assistance, these groups are under a duty to act within the framework of a legitimate public purpose. Id. Protection of the environment and encouragement of the creation and preservation of public parks is consistent with this purpose. Ignoring and trampling the needs, interests, and rights of poor and minority people, who are intended beneficiaries of the programs funded in part by Federal financial assistance, is not, and violates Complainant's rights under Title VI.

Wrongdoing by Federal Officials. Behind the conduct of conceit, wealth and racial and class animus of the tax-exempt environmental groups is the power and formal authority of Interior and CEQ. Acting with a sheer lack of impartiality, Interior Secretary Babbitt and CEQ Chairman George Frampton and his staff, have aligned themselves, and conspired with, the environmental groups and Collier Resources Company to deprive Complainants of the most basic of civil and constitutional rights.

"When a government erects a barrier to make it more difficult for one group to participate in a governmental program, that group has been denied its federally-protected constitutional right to equal protection." Houston Contract v. Metro-Transit Authority, 993 F. Supp. 545, 557 (S.D. Tex. 1997). Justice Burger stated it more precisely as follows: "To conclusively deny one subclass benefits presumptively available to the other denies the former the equal protection of the laws guaranteed by the due process provision of the Fifth Amendment." Jiminez v. Weinberger, 417 U.S. 628, 637 (1974).

Further,

> Government is the social organ to which all in our society look for the promotion of liberty, justice, fair and equal treatment, and the setting of worthy norms and goals for social conduct. Therefore, something is uniquely amiss in a society where the government, the authoritative oracle of community values, involves itself in racial discrimination.

McGlotten v. Connally, 338 F.Supp 448, 455 (D.D.C. 1972)(quoting Adickes v. S.H. Kress & Co., 398 U.S. 409, 445 (1968)(Douglas, J. concurring)).

When the Collier Plan was first discussed publicly (before it was submitted to the Air Force on May 17, 1999), its representatives claimed to have met with Interior officials. Knowing that Collier had initiated a formal request to begin mining exploration in the Big Cypress Preserve, and that the "swap" of land envisioned by Collier required extensive financial, environmental and public need review, we filed a Freedom of Information Act request on April 21, 1999 in order to determine exactly what had occurred, been promised, approved, and under consideration. After eight weeks of waiting, we were denied most of what we requested. On July 1, 1999, we filed an appeal of the FOIA determination. Interior has yet to respond to the appeal and continues to remain silent about its decision-making process with the Collier family, including what should be formal, public proceedings involving land swaps, environmental studies, status of mineral exploration, and land

valuation. The Collier plan, nevertheless, appeared formally in the SEIS without explanation or the availability of a public review process. Such conduct reflects the arbitrary exercise of power; in a closed room, to serve private interests. "A democratic government must . . . practice fairness; and fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights." Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170 (1951) (Frankfurter, J., concurring). In the end, "[t]hey who have suffered most from secret . . . proceedings have almost always been the poor, the ignorant, the numerically weak . . . and the powerless". Chambers v. State of Florida, 309 U.S. 227, 238 (1940).

With the inexplicable and unsuspected inclusion of the Collier and Hoover Plans in the Draft SEIS, at stake is not just a violation of NEPA or BRAC or the CEQ regulations but (i) of a shift to Petitioners in the burden of proof to show it is not a reasonable alternative, (ii) the existence of facts known only to the government and its sympathizers concerning how and why this Plan emerged with such formal stature; and (iii) the unfairness of surprise visited upon a minority and low income population. These are due process and civil rights violations. Rev. Chester O. Thompson, et al. v. Washington, 497 F.2d 626 (D.C. Cir. 1973); Caulfield, et al. v. The Board of Education, 449 F. Supp. 1203 (E.D. N.Y. 1978).

The repression of information so central to Complainant's rights is not merely a denial of one of the fundamental purposes of the Freedom of Information Act: to "ensure an informed citizenry, vital to the functioning of a democracy." F.B.I. v. Abramson, 456 U.S. 615, 621 (1982). It also interferes intentionally with Complainant's right to "the due course of justice"; the right to know "key facts which would form the basis of the[ir] claim for redress" upon which the right to petition the government and to seek meaningful judicial review are intrinsically based. See Bell v. City of Milwaukee, 746 F2d 1205, 1261-62 (7th Cir. 1984). Interior and the CEQ cannot secretly protect the Colliers because they -- or the Colliers -- also "controlled or influenced the administration . . . of justice," in all its forms, and reflected "indifference" to Petitioner's condition because of their racial, ethnic or class status. Id. at 64. In our view, that is precisely what the Colliers and the agencies have and continue to do, with the Air Force's acquiescence.[41]

The pervasive bias of certain federal officials in the "administration of justice" is most readily revealed in the conduct of the CEQ Chairman, George T. Frampton, and his staff. For over ten years, Chairman Frampton has advocated against the presence of airplane activity over the

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[41] Interior and the Colliers have a long history of secret dealing in Florida, Arizona and California. In 1999, the Colliers sought to "swap" with Interior a portion of its mineral interest in Great Cypress in exchange for a military base in San Diego. San Diego said no. In essence, Colliers tried to bully their way into the California market by throwing names around. According to Christine Shingleton, Executive Director of the LRA for the Tustin Marine Corps Station in Orange County, CA. she has heard the Colliers say: "we've talked to Al Gore, and we've talked to Bruce Babbitt. This is a done deal and we can get the Senate and the Congress to do what we want them to do." Sean Holton, *Collier Who? Californians Leery of Land Swap with Florida Family*, Orlando Sentinel, May 8, 1996, at A1. The same occurred in Orlando when the Mayor refused the Collier's proposal because the city had not been kept a part of the process. Sean Holton et al., *Orlando Kills Deal to Swap Navy Base*, Orlando Sentinel, September 13, 1996, at A1.

Florida Everglades. As President of the Wilderness Society from 1986 to 1993, he, along with other environmentalists, "urged the Air Force to shelve plans for conducting F-4 and F-16 dogfights over the Everglades for fear of disturbing both the wildlife and park visitors."[42] Moreover, in 1991, he encouraged the federal government to buy more than one million acres of land near federal parks, including 16,000 acres to be added to the Big Cypress National Preserve and 1,300 to be added to the Everglades National Park.[43] As Assistant Secretary for Fish and Wildlife and Parks at the Department of the Interior, in July 1996, two years after the Air Force's ROD and close to the final approval and transfer of the Base, he sought to delay the transfer of Homestead AFB to Miami-Dade County.

On June 8, 1999, prior to the release of the draft SEIS, Sally Ericsson, the CEQ's Associate Director for Natural Resources, informed the undersigned, as well as Mayor Shiver of Homestead, that neither the CEQ's mission, nor the requirements of NEPA, include an obligation to protect the interests and lives of poor or minority peoples. See Exhibit 1, at 12-13. Ms. Ericsson's statement, which flies in the face of the Executive Order on Environmental Justice, further demonstrates that the CEQ has determined, without any analysis of the evidence currently under review by the Air Force and the FAA, the outcome of this case, that a commercial airport at Homestead AFB is an environmentally unacceptable reuse. The CEQ has a formal supervisory duty with respect to the Air Force's administration of NEPA and a special duty to resolve conflicts -- now highly likely -- between agencies on whether a particular project should be approved.[44]

Such actions on the part of Federal officials violate the Standards of Ethical Conduct for Employees of the Executive Branch. These standards mandate that government official act with "every element of fairness" by directing Federal employees to act with "impartiality and not give preferential treatment to any private organization or individual." 5 C.F.R. § 2635 et seq.(2000); American Cyanamid Co. v. FTC, 363 F.2d 757, 767 (6th Cir. 1966).

The federal courts have consistently found that due process is violated when an administrator in an agency adjudication or rulemaking procedure fails to perform his duties with impartiality. Cinderella Career & Finishing Schools v. FTC, 425 F.2d 583, 591 (D.C. Cir. 1970) The courts have further recognized that not only must the actions of government officials, in fact, be free from bias, but that they must also be free from even the appearance of partiality. See Kennecott Copper Corp. v. FTC, 467 F.2d 67, 80 (10th Cir. 1972); see also American Cyanamid Co. v. FTC, 363 F.2d 757, 767 (6th Cir. 1966). Thus, when an agency decision maker has given "the appearance that he ha[d] already prejudged the case and that the ultimate determination of the merits would move in predestined grooves," due process requires the removal of such an agency official from further participation in the matter. See Cinderella Career & Finishing Schools, 425 F.2d at 590.

We have found no one within Interior or the CEQ that recognizes, let alone even acknowledge such standards of conduct exist.

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[42] Jacquelyn Swearingen, State News Service, May 25, 1988.

[43] See *Activists Want U.S. to Purchase 1 Million Acres*, Orlando Sentinel Tribune, Feb. 10, 1991, at A22.

[44] 40 C.F.R. § 1504 et seq. (2000).

The conduct of the not-for-profits and the other non-government officials warrant immediate attention and the most vigorous form of enforcement. The mere emblem -- "environmental group" -- once may have been a symbol of singular meaning, especially in its earlier life. But for more than a decade, that emblem has represented values and forms of conduct intended to denigrate, with the nicest or crudest of manners, the lives and dignity and civil rights of the poor and minority people. We urge you not to allow -- as has been done so far -- that emblem to be a shield for wrongdoing of a form this Division is obligated to uncover, deter and punish.

Respectfully submitted,

Harry C. McPherson — Neil Thomas Proto — Lawrence E. Levinson

Counsel for Complainants, the Equal Justice Coalition

Florida City
Homestead
Coalition of Florida Farmworker Organizations, Inc.
Dade County Farm Bureau
New Visions for South Dade, Inc.
Greater New Covenant Missionary Baptist Church
RCH - Haitian Community Radio
Homestead Air Base Developers, Inc.

Certificate of Service

I hereby certify that a copy of this Complaint was hand-delivered today, March 30, 2000, to the Honorable Bruce Babbitt, Secretary of Interior and the Honorable George Frampton, Chairperson, Council on Environmental Quality.

Lawrence E. Levinson

U.S. Department of Justice
Environment and Natural Resources Division

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December 27, 1999

Mr. Harry C. McPherson

Verner, Liipfert, Bernhard, McPherson & Hand

Washington, DC 20005-2301

Dear Mr. McPherson:

The Justice Department has received your "Petition for Extraordinary Relief' of August 10, 1999, concerning the pending decision by the United States Air Force and the Federal Aviation Administration ("FAA") on the proposed transfer of the airfield facilities at the former Homestead Air Force Base, Florida, to Dade County. This letter responds to your correspondence.

Your petition does not cite any statutory or regulatory authority on which you base your request for the Department to enjoin activities of the Council on Environmental Quality ("CEQ"), the Department of Defense ("DOD"), and the FAA relating to Homestead. Moreover, based on our review of the National Environmental Policy Act ("NEPA"), Executive Order 12898, the Base Realignment and Closure Act ("BCRA"), and Title VI of the Civil Rights Act, to which you refer in your petition, and the Department of Justice enabling statutes and regulations, we have not found any authority that would enable the Department to enjoin DOD and FAA from consulting with CEQ as the agencies conduct their NEPA analyses. The Department will continue to consult with DOD and FAA on their duties to comply with NEPA, BCRA, Title VI, Executive Order 12898, and other statutes and regulations relevant to the redevelopment of Homestead.

We share the concern you express for the interests of South Dade communities affected by Hurricane Andrew, especially their poor and minority populations. Several federal agencies, including the Department of Justice. are working together in the NEPA process to promote economic revitalization while ensuring protection of the environment. The Department of Justice and the other agencies recognize that time is important to the South Dade communities affected by Hurricane Andrew. Accordingly, the agencies are striving to complete quickly an accurate, thorough analysis of the Homestead redevelopment proposal. In the meantime, transfers of parcels unrelated to the proposed airport have been accomplished to accelerate economic benefits to South Dade.

Contrary to the petition's suggestion that the federal government is neglecting the interests of minority populations generally, the NEPA process is greatly enhancing the access of disadvantaged populations to the Homestead decision-making process. As the President recognized in the memorandum to heads of departments and agencies that accompanied Executive Order 12898, NEPA is an instrument federal agencies can use to ensure that environmental justice concerns are addressed in federal decision-making.

Similarly, the Council on Environmental Quality's Guidance on environmental justice provides that attainment of environmental justice is wholly consistent with the purposes and policies of NEPA.

In keeping with this guidance, the agencies are making particular efforts to include minority populations in the Homestead decision making process. For example, the Air Force published newsletters in both English and Spanish. The Air Force and FAA also held several public-scoping meetings in South Dade at which they provided translation and an interpreter for Spanish-speaking participants. Bilingual notice of these meetings was provided by direct mailing and in Spanish and English newspaper and radio announcements. In addition, the Air Force consulted with local agencies and non-profit organizations that provide services for farm workers and the homeless communities in South Dade County.

The Department will continue to assist the Air Force and the FAA in addressing environmental justice concerns while they evaluate the potential environmental and economic effects of redeveloping Homestead while meeting the requirements of the Base Realignment and Closure Act.

Lois J. Schiffer

Assistant Attorney General